

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Criminal Misc(Pet.) No. 1439 / 2017

Dr. Umesh Sharma S/o Shri Bhagirath Prasad, Aged About 60  
Years, Resident of House No. 44-A, Street No. 1, Firozpur Cant  
(Punjab).

----Petitioner

Versus



The State of Rajasthan.

Shri Dal Chand, Head Constable No. 45, Authorized Officer  
Police Station P.B.I. Medical & Health Services, Rajasthan, Jaipur.

----Respondents

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For Petitioner(s) : Mr. R.S. Choudhary

For Respondent(s) : Mr. V.S. Rajpurohit, P.P. for the State.

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**HON'BLE MR. JUSTICE P.K. LOHRA**

**Order**

**11/05/2017**

Accused-petitioner has preferred this misc. petition under Section 482 Cr.P.C. for quashing FIR No.10 of 2017, registered at Police Station PBI, Medical & Health Services, Rajasthan, Jaipur. In the impugned FIR, petitioner is charged for offences punishable under Section 4, 5, 6, 23 & 21 of Pre Conception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, Rule 9 & 10 of the Pre Conception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 and Sections 315, 511, 420, 120-B of the Indian Penal Code (IPC).

Succinctly stated, the facts of the case are that on an information received from one Babulal about foetus sex determination racket a decoy was sent where sex determination tests were conducted. The ultrasound machine found at the place and used illegally was seized for violation of the provisions PCPNDT Act, Rules, and the Indian Penal Code with registration of



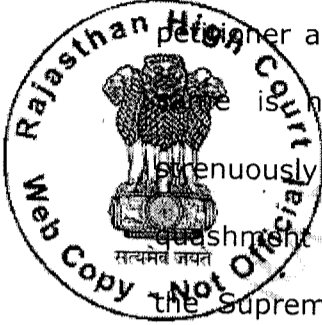
The present petitioner was the Manager serving at the ultrasound centre.

Learned counsel for the petitioner submits that on the basis of allegations levelled in the FIR no offence is made out against the petitioner and the impugned FIR is nothing but a sheer abuse of process of law. Learned counsel would contend that sex determination test was not conducted at the ultrasound centre of the petitioner and no incriminating record has been found by the police authorities at the centre as such no offence of PCPNDT is made out against petitioner as detailed in the FIR. Learned counsel for the petitioner further argued that allowing investigation into the impugned FIR would result in abuse of the process of the Court and therefore investigation in the matter be clogged perpetually and the same be annulled. Lastly learned counsel urged that assuming that any offence is committed, the incident is alleged to have been committed at Firozpur Cantt., Punjab and not in Rajasthan, therefore, local police of Firozpur has the jurisdiction to lodge FIR and investigate into the matter as such lodging of FIR by SHO PS PBI Medical & Health Services, Rajasthan is beyond territorial jurisdiction. In support of his

arguments, learned counsel has placed reliance on a decision of coordinate Bench of this Court in B.L. Koli Vs. Union of India, reported in 2010(1) Criminal Law Reporter (Raj.)841.

Per contra, learned Public Prosecutor has argued that the FIR *prima facie* discloses commission of cognizable offence by the petitioner and therefore prayer of the petitioner for quashing the petition is not at all tenable. Learned Public Prosecutor has strenuously urged that grounds set out in the petition for quashing of FIR are falling short of requirements laid down by the Supreme Court in many authoritative pronouncements and therefore no interference with the impugned FIR is warranted. It is submitted that inherent powers are to be exercised with great care and circumspection for quashing FIR and criminal proceedings and instant one is not a case wherein exercise of such power is desirable. Learned Public Prosecutor further submits that *prima facie* sufficient incriminating material is against the petitioner as such exercise of extraordinary inherent powers for quashing FIR cannot be invoked. While countering argument of learned counsel for the petitioner, it is submitted by learned Public Prosecutor that partly offences are committed within the State of Rajasthan, therefore, by virtue of clause (b) of Section 178 Cr.P.C., objection of territorial jurisdiction is wholly untenable.

I have heard learned counsel for the petitioner, learned Public Prosecutor and gone through the case file.



The extraordinary inherent powers conferred on this Court under Section 482 Cr.P.C. are wide in amplitude but these powers are also circumscribed by certain riders and cannot be exercised in a routine manner for quashing FIR and criminal proceedings. The inherent powers being extraordinary in nature, are to be exercised very sparingly with great care and circumspection with the solemn



object to prevent abuse of the process of the Court or otherwise to secure the ends of justice. In case Court is satisfied that the allegation contained in the FIR requires investigation, it is obviously not desirable for this Court to exercise inherent powers to stifle a legitimate prosecution. Supreme Court, in State of Haryana Vs.

Bhajan Lal & Ors. [1992 Supp (1) SCC 335], has examined ambit and scope of the powers under Section 482 Cr.P.C. for quashing FIR and the Court has laid down requisite guidelines in the matter.

The Court held: \

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the First Information Report or the FIR, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or FIR and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.



(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or FIR are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The Court has further observed:

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the FIR and that the extraordinary

or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

The law laid down in Bhajan Lal's case (supra) is clear and unequivocal which has been followed by the Supreme Court in subsequent decisions also. As such, while considering the question of quashing FIR in a petition under Section 482 Cr.P.C., prejudging the prosecution case by examining its weakness and contradictions is not permissible. It is only when on a bare reading of FIR no offence is spelt out, Court may exercise inherent powers.

If the grounds set out in the petition for assailing the impugned FIR are examined on the parameters for its quashment, then it would *ipso facto* reveal that the principal ground of challenge that it does not *prima facie* disclose commission of an offence is lacking the requisite sting.

It may be observed here that the role of the petitioner for commission of aforesaid offences is clearly spelt out in the FIR. He was Manager at the clinic where the decoy was tested for sex-determination. On the basis of *prima facie* incriminating evidence and violation of the provisions of the PCPNDT and IPC being revealed, the present FIR was lodged. In the impugned FIR petitioner is accordingly arrayed as an accused under Sections 4, 5, 6, 23 & 25 of the Pre Conception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, Rule 9 & 10 of the PCPNDT Rules and Sections 315, 511, 420, 120-B of the IPC.



Specific pejoratives of conducting illegal sex determination of pregnant women are levelled in FIR against the petitioner and his active involvement in commission of the offences. Therefore, it cannot be said at this stage that a perusal of the FIR does not disclose any offence against the petitioner or that continuance of the proceedings against him is an abuse of the process of the



However, at this stage, I refrain from expressing any opinion on merits of the case lest prejudice would be caused to the either side.

The argument of the learned counsel for the petitioner questioning territorial jurisdiction of the appropriate authority of State of Rajasthan to prosecute the petitioner as per the provisions of PCPNDT Act requires judicial scrutiny on the touchstone of Section 177 and 178 Cr.P.C. The foremost requirement for determining territorial jurisdiction, i.e., venue of inquiry or trial of a case, rests on the averments contained in the complaint or chargesheet, and therefore for adjudicating such vital issue due credence is to be given to the averments contained in the complaint/FIR. If FIR Ex.4 is examined in totality, then it would *ipso facto* reveal that part payment for determining sex of foetus was accepted by the accused persons from decoy at Raisinghnagar and further she was assured to convey the result of the test. The relevant excerpts from the FIR in this behalf, in vernacular, read as under:

"सहयोगी महिला श्रीमती किरण देवी द्वारा डॉ. अशोक कुमार एवं नर्स संदीप कौर से सम्पर्क किया गया तो डॉ. अशोक कुमार गुप्ता ने बताया कि मैं आपके साथ अपनी नर्स संदीप कौर को साथ भेजकर किसी डॉ. द्वारा भ्रूण की लिंग जांच करवा दूंगा जिसके लिए 35000 रुपये लगेंगे तथा लड़की होने पर गर्भपात करने के लिये कुल 15 हजार रुपये लगेंगे जिनमें से 20 हजार रुपये आपको एडवॉन्स के रूप में देने पड़ेंगे शेष लिंग जांच के दिन दे देना।"



"इसके बाद श्रीमती किरण देवी सहयोगी महिला एवं श्रीमती एकता शर्मा को भ्रूण लिंग जांच हेतु मांगी गयी एडवॉन्स राशि बीस हजार रुपये देने हेतु न्यू महावीर नर्सिंग होम रायसिंहनगर जिला श्री गंगानगर के लिये रवाना किया गया। तत्पश्चात न्यू महावीर नर्सिंग होम पर डॉ. अशोक गुप्ता के समक्ष श्रीमती किरण देवी ने बीस हजार रुपये सुश्री संदीप कौर को दिये तथा डॉ. अशोक गुप्ता एवं सुश्री संदीप कौर ने दिनांक 17.03.2017 को गर्भवती महिला की भ्रूण लिंग जांच कराने को कहा तथा शेष राशि पन्द्रह हजार रुपये लाने को कहा तथा समय प्रातः 10 बजे आने को कहा इसके बाद दिनांक 17.03.2017 को योजना के अनुसार गर्भवती महिला श्रीमती एकता शर्मा एवं सहयोगी महिला श्रीमती किरण देवी को रवाना न्यू महावीर नर्सिंग होम किया गया तत्पश्चात मन हैड कानि. मय कार्यवाही दल सदस्यों एवं श्री देवेन्द्र चौधरी सी.एम.एच.ओ. बीकानेर, श्री महेन्द्र सिंह जिला पी.सी.पी.ए.डी.टी. समन्वयक बीकानेर के साथ उनका पीछा प्रारम्भ किया।"

"साथ आई गर्भवती महिला श्रीमती एकता शर्मा से घटनाक्रम की जानकारी ली तो बताया कि दिनांक 16 मार्च 2017 को आप द्वारा श्रीमती किरण देवी सहयोगी महिला को 35000 रुपए के नंबरी नोट दिए थे उनमें से बीस हजार रुपए न्यू महावीर नर्सिंग होम, रायसिंहनगर में सुश्री संदीप कौर नर्स को किरणदेवी द्वारा दे दिया था। तथा दिनांक 17 मार्च 2017 को पंद्रह हजार रुपए फिरोजपुर में कैंट चौराहे पर मुझे ले जाते समय संदीप कौर को श्रीमती किरण ने दे दिए थे।"

Therefore, it can very well be said offence is partly committed within the local area of Raisinghnagar so as attract clause (b) of Section 178 Cr.P.C. in the matter. As such, the argument of the learned counsel though appears to be quite alluring but not of substance in the backdrop of facts and circumstances of the case and consequently rejected.



The judgment of this Court in B.K. Koli (supra) is clearly distinguishable wherein offence was not committed within the jurisdiction of Sikar rather it was committed at Delhi. The only reason for registration of FIR at Sikar (Rajasthan) was the place of residence of accused. Thus, the ratio of that judgment cannot render any assistance to the petitioner.



It is also noteworthy that matter is at the investigation stage and therefore at this stage interference with the statutory right of police to investigate the matter cannot be thwarted. Thus, keeping in view the facts and circumstances of the case in entirety, I feel dissuaded to interfere in the matter.

The upshot of the above discussion is that there is no merit in this petition and same is accordingly dismissed.

(P.K. LOHRA) J.

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